

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

FILED BY ag D.C.  
05 OCT -3 AM 10:30

**Eleanor Robin Bell-Flowers,**

**Plaintiff,**

**V.**

**Progressive Insurance Company,**

**Defendant.**

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TN, MEMPHIS

**Civil Action No. 04-3026-B P**

**ORDER GRANTING PROGRESSIVE CASUALTY INSURANCE COMPANY'S RULE  
56(f) MOTION TO STAY AND DENYING PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT WITHOUT PREJUDICE**

Before the Court is the Defendant Progressive Casualty Insurance Company's ("Progressive") Rule 56(f) Motion to Stay proceedings on and any ruling upon Plaintiffs' "Cross-Motion" for partial summary judgment and its supporting declaration and memorandum.

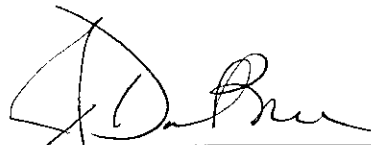
On August 18, 2005, Progressive filed a preliminary Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). Thereafter, on September 20, 2005, Plaintiff, proceeding *pro se*, filed a form fill-in-the blanks “Cross-Motion for Summary Judgment” and a supporting memorandum of facts and law. Plaintiff’s Memorandum of Facts and Law appears to address the issue raised in Progressive’s Rule 12(b)(6) Motion to Dismiss. The Cross-Motion for Summary Judgment, however, states that Progressive filed a motion for summary judgment, that Progressive’s motion for summary judgment is without basis in law or fact, and that Plaintiff is entitled to partial summary judgment on the issue of liability. Progressive, however, has not filed a motion for summary judgment under Fed. R. Civ. P. 56.

This document entered on the docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 10-4-05

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The initial Rule 16 Scheduling Conference, while scheduled, has yet to take place in this case and formal discovery has not begun. A potentially dispositive motion under Rule 12(b)(6) is pending. The Court initially finds that Rule 56 proceedings and any ruling under Rule 56 on the Cross-Motion for Summary Judgment should be held in abeyance until after the Court decides the Rule 12(b)(6) Motion to Dismiss. Should the Court deny the pending Motion to Dismiss, summary judgment pursuant to Rule 56, however, should not be granted until after the parties have had an adequate opportunity for discovery. Discovery in this case has yet to begin. Fed. R. Civ. P. 56(f) permits the Court to “refuse the application for judgment” and allow discovery to be conducted. To the extent that Plaintiff is actually seeking partial summary judgment pursuant to Rule 56 at this preliminary stage of the proceedings, the “Cross-Motion” for partial summary judgment is denied without prejudice, subject to being re-filed, if the Motion to Dismiss is denied, after the close of discovery pursuant to the dates to be established in the forthcoming Scheduling Order.

It is so ordered.

  
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J. Daniel Breen  
U.S. District Judge  
Date: 9/30/05



## Notice of Distribution

This notice confirms a copy of the document docketed as number 16 in case 2:04-CV-03026 was distributed by fax, mail, or direct printing on October 4, 2005 to the parties listed.

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Honorable J. Breen  
US DISTRICT COURT